of this right, and will furnish ground for recovery for consequent mental anguish. *Larson* v. *Chase*, 47 Minn. 307, 50 N. W. 238; *Kyles* v. *Southern Ry. Co.*, 147 N. C. 394, 61 S. E. 278. But see *Long* v. *Chicago, R. I. & P. Ry. Co.*, 15 Okla. 512, 86 Pac. 289. There is also authority for such recovery where the injury is merely negligent. *Hale* v. *Bonner*, 82 Tex. 33, 17 S. W. 605. *Cf. Birmingham T. & T. Co.* v. *Still*, 61 So. 611 (Ala.). *Contra, Hall* v. *Jackson*, 24 Colo. App. 225, 134 Pac. 151. The limited character of the right, however, is shown by the fact that it may be defeated by the deceased's contract. *Painter* v. *U. S. Fidelity & Guaranty Co.*, 91 Atl. 158 (Md.). Even in the absence of such a limitation, however, the principal case properly denies recovery, for the legal right is vested in the next of kin, and he alone may sue for the mental anguish caused by any mutilation.

EASEMENTS — MODES OF ACQUISITION: IMPLIED GRANT — RIGHT TO WATER PUMPED BY GASOLINE ENGINE ON ADJOINING LAND. — The defendant owned a tract of land, one part of which was supplied with water from a well on another part, which was pumped by a gasoline engine there situated. The *quasi*-dominant tenement was first leased to the plaintiff, and then sold to a third party, who later conveyed to the plaintiff. Neither deed mentioned the water rights, but the pipes were visible and the use of the system necessary to the full enjoyment of the land. The defendant then cut off the water, shut up the pump-house and blocked up the way thereto. The plaintiff now seeks to enjoin him from further interference with her rights. *Held*, that she is entitled to the relief sought. *Adams* v. *Gordon*, 106 N. E. 517 (Ill.).

In order to imply the grant of an easement, it must be apparent, continuous, and reasonably necessary to the enjoyment of the premises conveyed. *Spencer* v. *Kilmer*, 151 N. Y. 390, 45 N. E. 865. The word "continuous," has been the subject of much dispute. Some have thought that it required the easement to be capable of enjoyment without the intervention of man, as, for example, a drain or light and air. See GALE, EASEMENTS, 3 ed., p. 83. On this theory, the implied grant of a right of way has been held impossible. *Bonelli Bros.* v. *Blakemore*, 66 Miss. 136. But the view now generally adopted is that the easement is continuous if the tenements are permanently adapted to its enjoyment. *Larsen* v. *Peterson*, 53 N. J. Eq. 88, 30 Atl. 1094; *Baker* v. *Rice*, 56 Oh. St. 463, 47 N. E. 653. See GALE, EASEMENTS, 8 ed., p. 137. Under this view the grant of an easement to water pumped by an hydraulic ram has been implied. *Toothe* v. *Bryce*, 50 N. J. Eq. 589, 25 Atl. 182. The doctrine of implied easements, however, should be confined to narrow limits, for it does not depend on any intention of the parties, and is also hostile to the policy of the registry system. See 1 TIFFANY, REAL PROPERTY, p. 710. The principal case extends the rule farther than any previous decision, and is therefore to be regretted. But see *Foote* v. *Yarlott*, 238 Ill. 54, 87 N. E. 62; *Eliason* v. *Grove*, 85 Md. 215.

EMINENT DOMAIN — COMPENSATION — VALIDITY OF STATUTE EXTINGUISHING RIGHT TO COMPENSATION WITHOUT NOTICE. — A statute provided that all private owners of easements in any street which a city intended to close must present their claims for compensation within six years after the filing of the map by the city. The city filed such a map in 1895 to close two streets, in which private owners had easements. In 1898 the streets were closed. In 1906 the city condemned the fee in the streets for another purpose, and the owners' right to substantial compensation depended on the question whether the easements had been extinguished. *Held*, that the easements still exist, on the ground that the statute is unconstitutional. *In the Matter of the City of New York*, 212 N. Y. 538.

An abutter's private easement in a street cannot be extinguished without compensation. *Schneider* v. *City of Detroit*, 72 Mich. 240, 40 N. W. 329. Any

statute authorizing the taking of such a protected property right must therefore provide reasonable means for compensation, prior or subsequent. *State* v. *City of Perth Amboy*, 52 N. J. L. 132, 18 Atl. 670; *Tuttle* v. *Justices of Knox County*, 89 Tenn. 157, 14 S. W. 486. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., p. 813. It is also essential, except in three or four jurisdictions, that some sort of notice be given to the property owner before or after condemnation. See 2 LEWIS, EMINENT DOMAIN, 3 ed., § 564. Even where a statute does not specifically provide for notice, its constitutionality is usually upheld by implying a requirement for notice. See *Peoria & R. I. Ry. Co.* v. *Warner*, 61 Ill. 52. It seems better, however, to avoid such judicial legislation and hold void a statute which makes no provision for reasonable notice. *Savannah, F. & W. Ry. Co.* v. *Mayor*, 96 Ga. 680, 23 S. E. 847; *Board of Education* v. *Aldredge*, 13 Okla. 205, 73 Pac. 1104. In the principal case, the filing of a map to close the street was the only notice prescribed by the statute. The filing of a notice of appropriation in the registry of deeds has been held sufficient constructive notice in another jurisdiction to bar all right to compensation after three years. *Appleton* v. *City of Newton*, 178 Mass. 276, 56 N. E. 648. But (unless it can be said that the abandonment of the street by the city would itself carry the necessary notice) the doctrine of the principal case seems preferable, and the decision must be supported. It is settled, however, that if the landowner is protected by adequate notice, the mere fact that the statute throws upon the landowner the duty to seek compensation within a fixed time will not render it unconstitutional. *Banse* v. *Town of Clark*, 69 Minn. 53, 71 N. W. 819; *Barker* v. *Southern Ry. Co.*, 137 N. C. 214, 49 S. E. 115.

EVIDENCE — CHARACTER OF PARTIES — CRIMINAL PROSECUTION FOR ADULTERY: CHARACTER OF THE ALLEGED PARTICIPANT. — At the trial of an indictment for adultery, the defendant offered evidence of the good character of the woman with whom he was charged to have committed the offense. The evidence was excluded. *Held*, that the evidence should have been admitted. *Glover* v. *State*, 82 S. E. 602 (Ga. App.).

According to the general rule applicable in civil cases, the character of the defendant is not admissible on the issue of his adultery in an action for divorce. *Humphrey* v. *Humphrey*, 7 Conn. 116. But see 13 HARV. L. REV. 607. The defendant's character is equally inadmissible in criminal prosecutions for adultery, unless he takes advantage of the established exception allowing the criminal defendant to offer evidence of his own good character. *State* v. *Snyder*, 86 Vt. 449, 85 Atl. 984. But when the character of a third party is offered, the character rule applies with much diminished force, and the tendency is to treat the evidence like other collateral matter. See 1 WIGMORE, EVIDENCE, § 68. When adultery is in issue, therefore, since the proof must necessarily be largely circumstantial, and the character of the participant is usually quite relevant, the considerations favoring admissibility generally prevail. Thus, in a criminal action like that in the principal case, the good character of the alleged participant may be shown by the defendant to refute the charge. *Commonwealth* v. *Gray*, 129 Mass. 474. On the same principle, the prosecution may show the bad character of the participant. *State* v. *Eggleston*, 45 Ore. 346, 77 Pac. 738; *Sutton* v. *State*, 124 Ga. 815, 53 S. E. 381; *State* v. *Nieburg*, 86 Vt. 392, 85 Atl. 769. *Contra*, *Guinn* v. *State*, 65 S. W. 376 (Tex. Crim. App.). Similar rules govern evidence of this kind in civil suits for divorce on the ground of adultery. *Marble* v. *Marble*, 36 Mich. 386; *Clement* v. *Kimball*, 98 Mass. 535.

EVIDENCE — DECLARATIONS CONCERNING MENTAL STATE — DECLARATIONS OF PRESENT INTENTION AS PROOF OF EXISTING FACT. — In a suit by